

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*

Defendants.

Civil Action No. 3:17-01665
Hon. David A. Faber

DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT RE NUISANCE

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, and for the reasons set forth in the accompanying memorandum, Defendants AmerisourceBergen Corp., Cardinal Health, Inc., and McKesson Corp. move for summary judgment on the grounds that Plaintiffs have not stated a valid public nuisance claim under West Virginia law and that there is no evidence that Defendants interfered with a public right.¹

Dated: September 22, 2020

Respectfully submitted,

¹ The MDL court did not address Distributor Defendants' motion to dismiss the public nuisance claims in this case. The MDL court denied defendants' motions to dismiss statutory public nuisance claims brought under Oklahoma and Montana law by two tribal nations. *In re: National Prescription Opiate Litig.*, Dkt. 1680. Adopting that opinion by reference, the MDL court also denied the manufacturing defendants' motion to dismiss public nuisance claims brought by Summit and Cuyahoga Counties. *In re: National Prescription Opiate Litig.*, Dkt. 2578. Both opinions are inapposite. The former concerns (i) statutory claims (ii) under the laws of other states. The latter (i) concerns Ohio law and (ii) fails to consider The Restatement (Third) of Torts § 8 (among other failures of analysis).

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CERTIFICATE OF SERVICE

I, Steven R. Ruby, counsel for Defendant Cardinal Health, Inc., do hereby certify that on this 22nd day of September, 2020, the foregoing **“Defendants’ Joint Motion for Summary Judgment Re Nuisance”** was filed electronically via the CM/ECF electronic filing system and served on all counsel registered in the system.

/s/ Steven R. Ruby
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